

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-090108

12/02/2002

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED: \_\_\_\_\_

STATE OF ARIZONA

GERALD R GRANT

v.

MICHAEL RICHARD GLEASON

MICHAEL RICHARD GLEASON  
4800 S ALMA SCHOOL RD #2116  
CHANDLER AZ 85248-0000

NORTH MESA JUSTICE COURT  
REMAND DESK-SE  
JUDGE MICHAEL LESTER  
NORTH MESA JUSTICE COURT  
1837 S MESA DRIVE, #A201  
MESA AZ 85210  
BRIAN KARTH, COURT  
ADMINISTRATOR  
LIMITED JURISDICTION  
111 W MONROE, #820  
PHOENIX AZ 85003

MINUTE ENTRY

NORTH MESA JUSTICE COURT

Cit. No. #2731838

Charge: A. SPEED ABOVE POSTED LIMIT

DOB: 03/24/61

DOC: 06/15/02

SUPERIOR COURT OF ARIZONA  
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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on November 12, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the North Mesa Justice Court, and the Memoranda submitted.

Appellant was charged by complaint with Speeding, a civil traffic matter in violation of A.R.S. Section 28-701(A). Appellant entered a plea of Not Responsible and his case proceeded to trial on July 16, 2002 before Judge Pro Tem William Ponath.

The only issues raised by the Appellant concern the sufficiency of the evidence to warrant his conviction. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>1</sup> All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>2</sup> If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.<sup>3</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>4</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>5</sup> The Arizona Supreme Court has explained in State v. Tison<sup>6</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether

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<sup>1</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>2</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>3</sup> State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>4</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3<sup>rd</sup> 977, review granted in part, opinion vacated in part 9 P.3<sup>rd</sup> 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>5</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>6</sup> SUPRA.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-090108

12/02/2002

certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>7</sup>

There was substantial evidence to warrant a finding of responsibility; however, of principle concern to this court was an issue not raised by the Appellant: the trial judge's rejection of evidence (photographs) offered by the Appellant. During his testimony, the trial judge interrupted Appellant's testimony to ask about photographs which the Appellant sought to offer. The record contains a conversation between the Appellant and the trial judge with the trial judge apparently reviewing the photographs handed to him by Appellant. The trial judge rejected at least one of Appellant's photographs because the photographs did not agree with the testimony of the State's witness! The Judge Pro Tem stated, "howsoever, he (the officer) said this (the photograph) doesn't accurately show his position ...."<sup>8</sup> Relevance and admissibility of evidence offered by any party is not conditioned upon whether it agrees and supports the testimony of another witness or party. Relevant evidence is defined in Rule 401, Arizona Rules of Evidence as:

... evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Photographic evidence supporting Appellant's version of the facts and his testimony was clearly admissible and relevant.

This Court takes seriously the commitment to maintaining the qualities of a fair trial in all proceedings, including civil traffic hearings. Foremost among these is the right to due process during a hearing or trial. Article II, Section 4 of the Arizona Constitution and the 14<sup>th</sup> Amendment to the United States Constitution guarantee both parties the right to a full and fair trial, including the right to present evidence on one's own behalf. Exclusion of relevant evidence offered by the Appellant merely because it was inconsistent with the testimony of a police officer is a clear violation of the Appellant's due process rights to a fair trial. Arizona law is clear that when a party has been denied an essential component of due process, such as the right to present evidence on one's own behalf, such a denial constitutes fundamental error.<sup>9</sup>

For the reasons that the Appellant was denied his right to present evidence (photographs) on his own behalf concerning the position of the police officer at the time the police officer observed his vehicle,

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<sup>7</sup> Id. At 553, 633 P.2d at 362.

<sup>8</sup> Taped cassette recording of trial of July 16, 2002.

<sup>9</sup> See, State v. Flowers, 159 Ariz. 469, 768 P.2d 201 (App. 1989).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC 2002-090108

12/02/2002

IT IS ORDERED reversing the judgment of responsibility and sanction imposed in the North Mesa Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the North Mesa Justice Court for a new trial.